



Attorney Docket No. ARM-11206/06

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Richard M. Anderson

Serial No.: 09/139,298

Group Art Unit: 1761

Filing Date: August 25, 1998

Examiner: Curtis Edward Sherrer

Title: APPARATUS AND METHOD FOR PRODUCING GRAIN BASED
BAKED FOOD PRODUCTS

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Dear Sir:

The position taken by the Examiner in rejecting the amendment of the claims to contain "consumer" is contrary to the position the Examiner takes with respect to application of the prior art in a 35 U.S.C. §103. The Examiner is of the position that there is no support in the specification to permit Applicant to utilize the word "consumer". However, at the same time the Examiner utilizes a definition of the word "consumer" which is equivalent to "customer" in order to utilize the art which the Examiner has applied to the claims.

In the specification as filed, Applicant stated:

The grain based food product machine of the present invention may be conveniently located in a retail outlet store, such as a supermarket. Customers can come into the store and custom order a baked product to their own recipe criteria for immediate delivery or delivery at some future time. As a further convenience, distal input such as that indicated by telephone 126 or a home computer could be hooked into the processor 18 and keyboard 98 such that the customer can order the baked food product from his or her home and automatic billing can be incorporated into the control unit 18 for this mode. (Page 7, lines 14-21.)

Further, Applicant states "In this way, the customer can select a delivery time at his convenience so that the finished product is just out of the oven when picked up by the customer." (Page 8, lines 8-10.) Finally, the specification stated:

As discussed above, the customer interface can include an automated phone answering device or computer modem which permits the customer to input order information either by personal computer, or by phone from a remote location. The customer can input directly into the process control unit billing information, such as a credit card number. In this manner, the customer can place an order by phone or by computer days in advance and arrive at the store at the scheduled time to receive a freshly baked product made according to the customer's specifications. As discussed above, the unit can be provided in a single apparatus so that it can be installed in a retail store, such as a grocery store or convenience store." (Page 8, lines 20-29.)

It is clear from the above, that the original specification utilized the word "customer" to refer to a consumer or a purchaser who was ordering and purchasing goods for his or her own use. The use of words "order the baked food product from his or her home," "personal computer", "picked up by the customer" and the fact that the product is intended to be produced in a retail store such as a grocery store or convenience store clearly indicates that the "customer" referred to in the specification is also the "consumer" or end user.

In order to more particularly define Applicant's invention over the prior art, Applicant attempted to amend the specification and claims to utilize the word "consumer". The Examiner is of the position that a retailer or distributor who places an order with a bakery is the equivalent of a customer as used in Applicant's claims. Applicant amended the claims to use "consumer" in order to be consistent with the way the term "customer" is used in the specification. Applicant selected "consumer" to refer to a purchaser who is also the end user. It is submitted that the use of "consumer" is properly supported in the specification and fairly reflects what is supported by the specification.

It is clear that in this context the Examiner is using hindsight reconstruction to obviate Applicant's invention. None of the prior art discloses providing a single machine at a desired location with an electronic process control unit, consumer interface housing, customer delivery device, permitting the consumer to place an order from a remote location, and having a machine automatically produce baked goods from a variety of recipes to produce a fresh baked dough product for delivery at a specified time is disclosed in any of the prior art singly or in combination.

As previously discussed, the prior art references are directed to producing bread or baked products in commercial applications. In applying Litwak and Muskal, the Examiner states that "These two articles provide the teaching that bakery orders from retail customers can be taken and tracked by computer. They do not teach that these same computers are linked to the machinery for manufacturing the baked items." (Examiner's brief, page 5.) This is not correct. Neither of these references teach taking orders by computer. Muskal teaches only that the bakery has programs which "include those for accounts receivable, bread recipes, cake recipes, and billing for wholesale accounts." There is no teaching in this article that bakery orders are taken and tracked by computer. Litwak discloses software that keeps a running inventory of all the ingredients that are in storage and has production guides built in that manipulate the recipes and has historic sales files. Litwak does disclose taking an order by hand and entering it in the computer to track the inventory, etc.

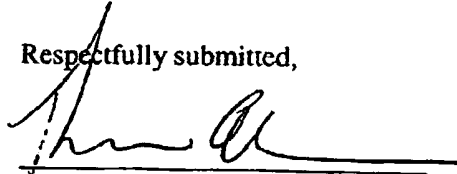
These references do not teach or suggest permitting a customer or consumer to enter directly into the control system of a single machine which is going to produce the product a specific order for a product or defined product from a group of recipes. There is no suggestion in these or any of the other prior art references to provide a single machine in which the customer or consumer can directly input an order, select a recipe and receive fresh

baked goods from a delivery station. Not only do the references not teach all of the features of Applicant's invention, there is no motivation to combine the references in the way suggested by the Examiner. The references are directed to permitting commercial bakeries to monitor and control their business.

The Examiner argues that it is prima facie obvious to automate a manual activity and to scale up or scale down well known processes. Applicant is doing much more than scaling down a commercial bread making apparatus or merely automating a process. Applicant is providing a single machine into which the customer or consumer can place an order directly and select from recipes stored in the controller using this machine to produce the specified baked good on demand and permitting the customer to pick up the specified grain based baked product from the machine at a convenient location. The claimed invention is more than merely automating or scaling down a well-known process. The Examiner has developed a hypothetical process by combining a number of references and then argues Applicant is merely scaling down or automating the hypothetical combination of prior art. Even if it could be argued that the combination of references would produce a fully automated baking process, there is no system in the prior art in which the customer directly inputs his order into an automated facility either at the facility or from his place of business, selects a recipe and a baked product is produced without human intervention for delivery at a customer station. If there were such prior art, the Examiner could argue that Applicant is merely scaling down a large operation. There is no motivation to combine these references in such a way as to arrive at a single machine as required by Applicant. None of the references involve providing a single machine which may be placed at a location convenient to the customer or consumer and permitting the customer or consumer to input its order directly into the machine.

Accordingly, Applicant respectfully requests reversal of the rejection and allowance of the claims.

Respectfully submitted,



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